

Department of Justice

§ 52.02

(c)(1) In determining whether to consent to having an appeal taken to the district court rather than to the court of appeals, the attorney for the government should consider all relevant factors including—

- (i) The amount in controversy;
- (ii) The importance of the questions of law involved;
- (iii) The desirability of expeditious review of the magistrate judge's judgment.

(2) In making a determination under paragraph (c)(1) of this section the attorney shall, except in those cases in which delegation authority has been exercised under 28 CFR 0.168, consult with the Assistant Attorney General having supervisory authority over the subject matter.

[Order No. 2012-96, 61 FR 8473, Mar. 5, 1996]

§ 52.02 Criminal proceedings: Pretrial trial.

(a) A judge of the district court, without the parties' consent, may designate a magistrate judge to hear and determine criminal pretrial matters pending before the court, except for two named classes of motions; as to the latter, the magistrate judge may conduct a hearing and recommend a decision to the judge. 28 U.S.C. 636(b)(1) (A), (B).

(b) When specially designated by the court to exercise such jurisdiction, a magistrate judge may try, and impose sentence for, any misdemeanor if he has properly and fully advised the defendant that he has a right to elect "trial, judgment, and sentencing by a judge of the district court and * * * may have a right to trial by jury before a district judge or magistrate judge," and has obtained the defendant's written consent to be tried by the magistrate judge. 18 U.S.C. 3401 (a), (b). The court may order that proceedings be conducted before a district judge rather than a magistrate judge upon its own motion or, for good cause shown upon petition by the attorney for the government. The petition should note "the novelty, importance, or complexity of the case, or other pertinent factors * * *". 18 U.S.C. 3401(f).

(1) If the attorney for the government determines that the public interest is better served by trial before a district judge, the attorney may petition the district court for such an order after consulting with the appropriate Assistant Attorney General as provided in paragraph (b)(2) of this section. In making this determination, the attorney shall consider all relevant factors including—

- (i) The novelty of the case with respect to the facts, the statute being enforced, and the application of the statute to the facts;
- (ii) The importance of the case in light of the nature and seriousness of the offense charged;
- (iii) The defendant's history of criminal activity, the potential penalty upon conviction, and the purposes to be served by prosecution, including punishment, deterrence, rehabilitation, and incapacitation;
- (iv) The factual and legal complexity of the case and the amount and nature of the evidence to be presented;
- (v) The desirability of prompt disposition of the case; and
- (vi) The experience and qualifications of the magistrate judge, and the possibility of the magistrate judge's actual or apparent bias or conflict of interest.

(2) The attorney for the government shall consult with the Assistant Attorney General having supervisory authority over the subject matter in determining whether to petition for trial before a district judge in a case involving a violation of 2 U.S.C. 192, 441j(a); 18 U.S.C. 210, 211, 242, 245, 594, 597, 599, 600, 601, 1304, 1504, 1508, 1509, 2234, 2235, 2236; or 42 U.S.C. 3631.

(3) In a case in which the government petitions for trial before a district judge, the attorney for the government shall forward a copy of the petition to the Assistant Attorney General having supervisory authority over the subject matter and, if the petition is denied, shall promptly notify the Assistant Attorney General.

(5 U.S.C. 301, 18 U.S.C. 3401(f))

[Order No. 903-80, 45 FR 50564, July 30, 1980, as amended by Order No. 2012-96, 61 FR 8473, Mar. 5, 1996]